STATE OF MICHIGAN

COURT OF APPEALS

GREAT NORTHERN INSURANCE COMPANY,

Plaintiff-Appellant,

v

DANG NGO, a/k/a DENNY NGO, a/k/a DAN NGO, a/k/a DANG NHO, d/b/a U.S. NAILS, L.L.C.,

Defendant,

and

FARM BUREAU GENERAL INSURANCE COMPANY OF MICHIGAN,

Garnishee Defendant-Appellee.

UNPUBLISHED
June 25, 2009

No. 285569
Oakland Circuit Court
LC No. 2006-072575-NZ

Before: Owens, P.J., and Servitto and Gleicher, JJ.

PER CURIAM.

In this garnishment action, plaintiff appeals as of right from the trial court's order granting summary disposition in favor of garnishee defendant. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant Dang Ngo ("Ngo") owned and operated a U.S. Nails store in Royal Oak. On or around March 30, 2005, an employee of Ngo stole two diamond rings belonging to a customer that were insured through plaintiff. Garnishee defendant insured Ngo under a business liability policy (the "Policy"). Ngo's employees were also insureds under the Policy. A jury convicted the employee of two counts of larceny for the theft of the rings. Subsequently, plaintiff, as subrogee of the customer, filed a complaint against Ngo for the theft of the rings, alleging that Ngo was negligent for failing to take measures to ensure the rings were not stolen.

By way of consent judgment, Ngo admitted the allegations in the first amended complaint. The consent judgment was entered in favor of plaintiff in the amount of $196,000, plus interest. Pursuant to the consent judgment, Ngo assigned to plaintiff any rights he may have under the Policy. Thereafter, plaintiff filed a writ of garnishment against garnishee defendant.

Garnishee defendant moved for summary disposition to dismiss the writ of garnishment on the grounds that there was no accident triggering coverage and, alternatively, the intentional and criminal acts exclusions barred coverage due to the intentional and criminal acts of Ngo's employee. The trial court granted garnishee defendant's motion and ruled there was no "occurrence" or accident since the rings were stolen and, therefore, garnishee defendant was not required to provide coverage under the Policy. The trial court entered a separate order dismissing the writ of garnishment. Plaintiff now appeals as of right.

Plaintiff argues on appeal, as it did in the trial court, that the "occurrence" exclusion in the Policy does not bar coverage because, when viewed from Ngo's standpoint, an "accident" occurred, thus triggering coverage. Specifically, according to plaintiff, Ngo did not intend the employee's act that caused the injury. This, in combination with Ngo's separate negligence, constituted an "occurrence."

This Court reviews a trial court's decision on a motion for summary disposition under the de novo standard of review. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). An issue involving the proper interpretation of an insurance contract is also reviewed de novo. *Allstate Ins Co v McCarn (After Remand)*, 471 Mich 283, 288; 683 NW2d 656 (2004).

An insured's claims are lost if any exclusion in the insurance policy applies. *Hayley v Allstate Ins Co*, 262 Mich App 571, 574; 686 NW2d 273 (2005). Hence, exclusionary clauses in insurance policies shall be strictly construed in favor of the insured. *Id.* But a court must enforce an insurance contract in accordance with its terms to avoid holding an insurance company liable for a risk it did not assume. *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 354; 596 NW2d 190 (1999). Therefore, when an exclusion in an insurance policy is clear and specific, the exclusion must be enforced. *Hayley, supra* at 574. Further, when reviewing an exclusionary clause, the court should read the contract as a whole to effectuate the overall intent of the parties. *Id.* at 575.

Here, the Policy states in relevant part:

> BODILY INJURY LIABILITY AND PROPERTY DAMAGE LIABILITY COVERAGE.
>
> We will pay, on behalf of the insured, all sums which the Insured becomes legally obligated to pay as damages because of bodily injury or property damage caused by an occurrence to which this insurance apples.

The term "occurrence" is defined as "an accident, including continuous or repeated exposure to conditions which results in bodily or property damage neither expected or intended from your standpoint."

Plaintiff maintains that whether an "accident" occurred should be viewed from Ngo's standpoint, not from that of the employee who stole the rings, because Ngo did not intend the employee's act that caused the injury. Plaintiff argues that Ngo's negligence constitutes an "occurrence." In *Michigan Basic Prop Ins Ass'n v Wasarovich*, 214 Mich App 319; 542 NW2d 367 (1995), this Court rejected a similar argument. In *Wasarovich*, the Court examined

insurance coverage issues regarding a bodily injury claim that arose from the intentional discharge of a firearm. The underlying action arose from the death of an innocent third party who was shot in the head by Mrs. Wasarovich's ex-husband. The decedent's estate sued Mrs. Wasarovich for negligence allegedly arising from the crime.

At issue was the definition of "occurrence" which, similarly, required an "accident" including "exposure to conditions" that results in injury or damages. *Wasarovich, supra* at 323-324. The Court held that the trial court erroneously considered the question of whether there was an "accident" from the standpoint of Mrs. Wasarovich, rather than from the standpoint of her ex-husband, who was also an insured under the policy. *Id.* at 325-326. Relying on the Michigan Supreme Court's decision in *Arco Industries Corp v American Motors Ins Co*, 448 Mich 395, 531 NW2d 168 (1995), the Court stated, "In determining whether an accident occurred, we must view the incident itself from the standpoint of the insured actor who caused the injury in question." *Wasarovich, supra* at 327. Because the shooting by Mrs. Wasarovich's ex-husband was clearly intentional and was not a "chance happening," the Court concluded there was no "accident." *Id.* at 324. We agree with that holding.

Here, because the theft of the rings by Ngo's employee, who was an insured under the terms of the Policy, was clearly intentional and was not a "chance happening," there was no "accident."[1] Because the theft of the rings by an insured employee was not an accident as required by the Policy, there is no coverage and summary disposition was property granted to garnishee defendant.

Affirmed.

/s/ Donald S. Owens
/s/ Deborah A. Servitto
/s/ Elizabeth L. Gleicher

[1] Contrary to plaintiff's suggestion, the form and language of the consent judgment, in which Ngo conceded negligence in failing to warn or take precautions resulting in the loss of the rings, does not trigger coverage in this case. A court must focus on the cause of the injury to ascertain whether coverage exists. *US Fidelity & Guaranty Co v Citizens Ins Co of America*, 201 Mich App 491, 493-494; 506 NW2d 527 (1993). Here, the employee's theft of the rings was the direct cause of the property loss.